

trap that removes fats, oils, and greases from the kitchen waste water before it enters the centralized sanitary sewer. The restaurant is a private business with a service connection that had been blocked by a defective grease trap which caused pollution to unnamed tributary to Dardenne Creek.

- B. Dardenne Creek and its tributaries are 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 July 5, 2012, the Department received a concern regarding a fish kill at Royallbrook Lane, located approximately 1,000 feet down stream of the Arcade Plaza. The report claimed there were 70 to 100 dead fish in the creek and the waters of the unnamed tributary were black and malodorous. After receiving the report on the same day, Department staff conducted an investigation of the fish kill. Staff members from the Missouri Department of Conservation (MDC) were also called to investigate the reported fish kill. MDC and Department investigating staff found evidence of a fish kill which involved approximately two (2) bass, ten (10) minnows, and three (3) sunfish downstream of the restaurant.
- E. During the investigation, the inspector and the Department observed sanitary sewage, solids and food waste solids (sludge and rags mixed with empty sauce packets and grease solids) discharging into the unnamed tributary of Dardenne Creek from one green PVC (clean out) pipe having a 6-inch diameter being 4 feet high. Also, 100 feet upstream from the clean out pipe, staff observed a deep pool of oily amber grease water below a white PVC pipe having a 12-inch diameter emerging from the hillside. The inspector took samples and conducted water quality testing at a Pool North of Royallbrook Bridge and the Grease/Water Pool (white PVC pipe).
- F. Based on MDC's *Report of Pollution Investigations and Fish Kills*, dated July 9, 2012, the grease from El Maguey into the unnamed tributary resulted in a 300 yard stretch of kill of fifteen (15) fish worth \$5.83.
- G. On July 18, 2012, SET Environmental, Inc. met with Department staff and reported a calculated total of excavation approximately 41.12 tons of sewage/grease which impacted the soil, trees, and brush as a result of the release.
- H. On August 27, 2012, the Department issued Notice of Violation (NOV) number SLR2012081316416006 to Mr. George Marcher for a waste water discharge, which (intermittently) discharged to an unnamed tributary to Dardenne Creek, waters of the state, without a permit. The NOV required Mr. Marcher to submit a written statement to the St. Louis Regional Office by September 10, 2012, explaining what actions have been taken to correct the unsatisfactory feature and prevent a reoccurrence in the future.

- I. On September 25, 2012, the Department received a letter from Thompson Coburn, LLP, representing Twin Plaza's, LLC. The letter included a report explaining what corrective actions the corporation has taken to resolve the unsatisfactory features and listed preventive actions to prevent reoccurrences in the future.
- J. The MCWL 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, and the costs and expenses of restoring any waters of the state to their condition as they existed before violation, sustained by it because of any violation.
- K. The Department dispatched employees to investigate the July 5, 2013, unauthorized discharge of grease wastes. In doing so, the Department and MDC incurred costs and expenses, including but not limited to, water sampling and analysis, photographs, and travel expenses. These costs incurred by the Department total four hundred sixty five dollars and zero cents (\$465.00). The incurred costs by MDC calculated being three hundred thirty-one dollars and ninety-one cents (\$331.93). The state's total investigative cost is seven hundred ninety-six dollars and ninety-three cents (\$796.93).
- L. 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. CITATIONS AND CONCLUSIONS OF LAW

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

1. On July 5-19, 2012, operated, used or maintained a water contaminant source (grease and sewage disposal pipes), which intermittently discharged to an unnamed tributary to Dardenne Creek, waters of the state, without a Missouri State Operating Permit, in violation of Sections 644.051.2, 644.076.1, RSMo, and 10 CSR 20-6.200(1)(A).
2. Caused pollution of the unnamed tributary to Dardenne Creek, waters of the state, placed, caused, or permitted to be placed water contaminants (grease, food waste and sanitary sewage) 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. The facility discharged water contaminants into water 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(3)(A),(B),(C),(D),(F), and (G).

IV. AGREEMENT

- A. The Department and the corporation desire to amicably resolve all claims that may be brought against the restaurant for violations alleged above in Section III, Citations and Conclusions of Law, without the corporation admitting to 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 corporation under this AOC.
- C. The corporation 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 in the form of a certified check or cashier's check made payable to "St. Charles County Treasurer, as custodian of the St. Charles 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 the corporation. The check shall be delivered to:

Accounting Program
Missouri Department of Natural Resources
P.O. Box 477
Jefferson City, MO 65102-0477

- D. The corporation shall pay the state's investigative costs in the amount of seven-hundred ninety six dollars and ninety-three cents (\$796.93) in the form of a certified check or cashier's check made payable to the "State of Missouri." The check in the amount of seven-hundred ninety six dollars and ninety-three cents (\$796.93) is due and payable upon execution of this AOC by the corporation. The check shall be delivered to:

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Missouri Department of Natural Resources
P.O. Box 477
Jefferson City, MO 65102-0477

- E. Within thirty (30) days of the effective date of this AOC, the corporation shall complete the following operational and maintenance adjustments to the facility:
- (i) Submit a grease management plan for the corporation that will address waste storage and frequency of waste disposal to the Department for review and approval;
 - (ii) Within fifteen (15) days of receipt of Department comments on the corporation's grease management plan, the corporation shall respond to and adequately address, to the Department's satisfaction, all of the Department's comments on the grease management plan; and
 - (iii) Immediately upon Department approval of the grease management plan, the corporation shall implement and maintain the grease management plan and make the plan available to the corporation's employees.
- F. Immediately upon becoming aware that a deadline or milestone as set forth in this AOC will not be completed by the required deadline, the corporation 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 corporation 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 corporation's right to request an extension and may be grounds for the Department to deny the restaurant an extension.
- G. Should the corporation fail to meet the terms of this AOC, the corporation shall be subject to pay 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

Stipulated penalties will be paid in the form of a certified or cashier's check made payable to "St. Charles County Treasurer, as custodian of the St. Charles 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 65102-0477

- H. Nothing in this AOC forgives the corporation 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. 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.
- I. 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.
- J. 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 corporation for its records.
- K. The corporation shall comply with the MCWL, Chapter 644, RSMo and its implementing regulations at all times in the future.

V. RIGHT OF APPEAL

By signing this AOC, the corporation 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, 640.013, 644.056.3, 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:

Mr. Phillip Akin
Compliance and Enforcement Section
Water Protection Program
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, MO 65102-0176

Agreed to and Ordered this 2nd day of April, 2014



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

Agreed to and Ordered this 24 day of March, 2014



Owner
Missouri Rio Bravo, Inc. d/b/a El Maguey Mexican Restaurant

Copies of the foregoing served by certified mail to:

Mr. Joshua Knight, Attorney
DAVIS & KNIGHT, LLC
2270 Bluestone Drive
St. Charles, MO 63303

CERTIFIED MAIL: 7012 2920 0002 0668 1341

Owner
El Maguey, Inc.
2737 Highway K
O'Fallon, MO 63368

c: Ms. Diane Huffman, Environmental Protection Agency
Mr. Chris Wieberg, Chief, Operating Permits Section
Ms. Dorothy Franklin, Director, Southwest Regional Office
Missouri Clean Water Commission